1942. K File No. O-Petrol/42

Legal DEPARTMENT

A BRANCH

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Subject:—

Opinion under the

Petroleum Act, 1934

D-7

File No. O - Petrol/42

Std. Sectt. Slip 24 B e.

279-A

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V.V.R.
30/4/56.

MADRAS HIGH COURT.

CRIMINAL REVISION CASES Nos.277 AND 278 OF 1912.

CRIMINAL REVISION PETITIONS NOs. 231 and 232 OF1912

January 7, 1913.

Present :- Mr. Justice Miller, and Mr.Justice Sundara Aiyar.

In No.277 OF 1912.

SESHACHALAM CHETTY & PETITIONER

In No.278 of 1912.

GOVINDASAMY CHETTY - PETITIONER

versus

EMPEROR - OPPOSITE PARTY.

License - Offensive trade- Storage of oil- Place where daily consumption of oil kept -License necessary.

A place where varying quantity of oil is kept for daily sale is a place used for storing oil and therefore a license must be taken.

Petition uder sections435 and 439 of theCode of Criminal Procedure, 1898, praying the High Court to revise theorders of thethird Presidency Magistrate, Gorge Town, in Civil Cases Nos.266, 29 and 2,66,30 of 1912.

Mr. E.T.Osborne, forthe Petitioners.
Mr. J.C.Adam, Contra.

ORDER :- In our opinion , the Magistrate is not shown to have been wrong in his conclusion that the places in respect of which the petitioners were required to take out license were used for storing oil.

It was conceded by thecounter- pititioner that the notification of the14th January 1908 declaring a trade in oil to be an offensive trade should , so far as we are concerned with it in thsis case, be deemed to lay down that the storing of oil is and offensive trade, and the question therefore, is whether the petitioners occupied places used for storing oil. The evidence is that the petitioners are traders in oil, in considerable quantities which is kept by them in a godown,some stock of it may be kept in part of the shop for thepurpose of meeting the retail

P.I.No. 3028/27/3/42.

Submitted.

Please see Chief Secretary's note dated 26-3-42 at page 68 ante. One Mr. N.I. Shah of Nahad is licensed to store petrol under the Petroleum Rules, 1937. Petrol is not however sold by him at the storeshed but he supplies petrol in cans in his shop in the Bazar Path as and when required by his customers. Mr. Shah has a license to sell petrol at that shop under the Sales Tax Act but no license under the Petroleum Rules to store petrol at he shop in the Bazaar. It is proposed that this shop in the Bazaar should be removed. One of the remedies suggested was that the certificate of "no-objection" issued by the District Authority under sub-rule (3) of rule 115 of the Petroleum Rules should be withdrawn. But as regards this the C.S. observes that a license can be cancelled for failure to comply with its conditions, and as no failure has occurred the licence for the store-premises cannot be withdrawn. The A.L.A. is requested to state whether this view is correct.

2. The view expressed by C.S. in para. 1 of his note dated 26-3-42 that a licence can be cancelled for failure to comply with its conditions appears to be correct. Rule 90 of the Petroleum Rules, 1937, provides that no one shall store any petroleum except under a license granted under the rules. Chapter VI provides for the grant of licenses. Under

demand. The stock naturally varies in quantity and may at one time be not more than will suffice for a day or less and at another be enough for several days ; but the place where the stock is kept is regularly used for the purpose of holding the stock and naturally a quantity of oil ordinarily sufficient to meet the estimated demand for the period which must elapse before renewal is possible, will usually be maintained there. We think that place for storing the stock of oil which is to be sold at the earliest opportunity. The case in Emperor v. Wallace Flour Mill Company (1) is somewhat different , the learned Judges were able to find that the purposes for which the place was used was not the storing of the oil.

We dismiss the petitions.

Petitions dismissed.

(1)29B .193; 6 Bom. L. 735; 1 Cr.L.J. 835.

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rule 115(1) licenses for importation and storage can be granted by thelicensing authorities set forth in Schedule I. Under rule 116 every license granted shallbe held subject to theconditions endorsed on it. Sub-rule (1) of rule 121 provides that every license granted under the rules shall be liable to be cancelled by order of the licensing authority for any contravention of act or of any rule thereunder, or of any condition contained in such license These provisions show that there is noe ground to cancel the license in the present case.

3. The next point is whether the sale of petrol cans at the sho in the Bazaar is unauthorized. As regards this shop, Mr. Shah holds a license under section 6 of the Sales Tax Act, 1939. But there is no license under the Petroleum Rules for storage of petrol in that sho . The Inspector of Explosives in his letter at page 55 ante states that under the Petroleum Rules no person is authorised to sell petroleum from premises which are not licensed under the Petroleum Rules although he holds a license under the Bombay Sales Tax Act, 1939, in respect of the premises. It appears that this statement of the Inspector of Explosives is not correct. There is no provision in the Petroleum Rules requiring thetakin out of a licence for the sale of petroleum. As a matter of fact, the Petroleum Act,1934 (under which the Petroleum Rules have been framed) provides only for the import, transport, storage, production. refinting and blending of petroleum(vide the preamble).

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Office of the R.L.A.

It appears that one Mr.N.P.Shah of Ahmedabad holds a licence for the storage of petroleum under the Petroleum Rules, 1937. He does not, however, sell petrol at the storage shed, but supplies petrol in cans in his shop in the bazaar peth as and when required by his customers. He holds a license forsale of petrol at that shop under the Bombay Sale Tax Act, 1939. It is proposed that his shop in the bazaar pethe should be remove to some place outside the town where there is less traffic.

The questions raised for the consideration of the R.L.A. are:-

(1) whether his licence for storage of petroleum can be cancelled;

(2) whether the sale of petrol in cans at the shop in the bazaar peth is unauthorised; and

(3) whether the bringing of petrol in cans from the storage shed to theshop for immediate sale would amount to storage of petroleum requiring a licence under the Petroleum Rules.

Rule 90 of the Petroleum Rules, 1937, rovides that save as provided in sections 7,8,and 9 of the Petroleum Act, 1934, ~~extend~~ and by rule 109 no one shall store petroleum except under a licence under these rules. Under rule 121 every licence granted under the rules shall be liable to be cancelled by order of the licensing authority for any contravention of the Act or of any rule thereunder or of any condition contained in such licence. Since Mr. Shah has not contravened the Act or any rule or any condition contained in the licence the question of cancellation of the licence on any such ground does not arise. The view taken by the Chief Secretary on this point is therefore correct.

The object of thePetroleum Act, 1934, as stated in its preamble is to regulate the import, transport, storage, production, refining and blending of petroleum and other inflammable substances. Sub-section (1) of section 3 provides that no one shall import, transport or store any petroleum save in accordance with the rules made under section 4. All the rules made unde section 4 provide for regulating the import, transport and storing of petroleum. Obviously, therefore, neither the Act nor the rules made thereunder provide foor regulating the sale of petroleum. The sale of petrol however requires a licence under section 6 of he Bombay Sales TaxAct, 1939. Rule 4 of the Bombay Motor Spirit Sales Tax Rules provides that every licence shall be in theform B or D as the case may be, and shall be subject to the conditions and restrictions therein specified and to he procisions of these rules. Form D relates to thelicence for retail sale . This form requires the situation of the shop tobe specified. Consequently it appears that the sale of petrol by Mr. Shah in his sho in bazaar peth is lawful. The view expressed by theInspector of Explosives in his letter at page 55 ante that no person is authorised to sell petroleum from premises which are not licensed under thePetroleum Rules, although he holds a licence under the Bombay Sales Tax Act, 1939 in respect of the premises does not appear to be correct. Unless such sale in fact involves a breach of thePetroleum Rules regarding storage or transport of the motor spirit sold, there will be no prohibition in respect of such sale under those Rules.

As regards the third question it appears to be primarily a question of fact whether in bringing cans to the shop for immediate sale, the petroleum is or is not stored at the shop at lease for the time being. Prima facie any detention of the cans at the shop by or on behalf of the seller or shop keeper when the petroleum in the cans is intended to be sold to customers as and when they come would appear to require a licence under Rule 90 of the Petroleum

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Rules, 1937. (See section 2(d) and (f) and section 8 of the Petroleum Act, 1934 Cf. Emperor v. Manubhai Hafi Ahmed I.L.R. 60 Bom. 760). It would , however, not require a licence if the sale has already taken place at the godown and the detention in the shop of the seller is incidental to the ordinary course of transport on behalf of a buyer who is not required to take out a licence by virtue of the provisions of section 8 of the Act.

O.C. Sd/-P.N.L.
6/4

Remembrancer of Legal Affairs.

U.O. to ..&.S.D. No. 1997 , dated 7th April 1942.

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28/4/66